

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KEVIN MCHUGH,)
Plaintiff,)
-vs-) Case No.:
O'REILLY AUTOMOTIVE, INC., an) Judge:
Illinois Corporation, by and through its)
Authorized agent and employee,) Magistrate
CHARLES QUINONES, JR., and)
CHARLES QUINONES, JR. individually)
Defendants.)

NOTICE OF REMOVAL

Pursuant to *Title 28 U.S.C. §1441, et seq.*, and *28 U.S.C. §1332*, Defendant, **O'REILLY AUTOMOTIVE, INC.**, a Missouri corporation, by and through one of its attorneys, ROBERT M. BURKE of JOHNSON & BELL, LTD., hereby gives notice of the removal of the above captioned action from the Circuit Court of Cook County, Cause No. 2009 L 009548, to the United States District Court, Northern District of Illinois, Eastern Division, and in support thereof, states the following:

1. On or about August 13, 2009, Plaintiff, Kevin McHugh, initiated the above captioned lawsuit by the filing of a Complaint entitled Kevin McHugh v. O'Reilly Automotive, Inc., an Illinois corporation, by and through its authorized agent and employee, Charles Quinones, Jr., and Charles Quinones, Jr., individually, docket No. 2009 L 009548 in the Circuit Court of Cook County, Illinois. A copy of the initial Complaint at Law is attached hereto, labeled Exhibit "A", and incorporated herein by reference.

2. On or about August 13, 2009, Plaintiff caused a Summons to be issued to O'Reilly Automotive, Inc. A Copy of said Summons is attached hereto, labeled Exhibit "B", and incorporated herein by reference.

3. Service was obtained on O'Reilly Automotive, Inc. on or about August 19, 2009.

4. On August 18, 2009, Plaintiff filed a motion and obtained leave of Court to hire a special process server. Copies of the Notice of Motion, Motion and Order are attached hereto as Group Exhibit "C";

5. To date, service has not been obtained upon Charles Quinones, Jr.

6. The United States District Court for the Northern District of Illinois, Eastern Division, has jurisdiction over the above described action pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1441 for the following reasons:

- (a) Plaintiff, Kevin McHugh, is a resident and citizen of the State of Illinois;
- (b) Defendant, O'Reilly Automotive, Inc., at the time suit was filed, was a Missouri corporation with its principal place of business in Missouri; therefore, for diversity of citizenship purposes, it is a citizen of Missouri;
- (c) Defendant, Charles Quinones, Jr., at the time suit was filed, was a resident and citizen of the State of Wisconsin;
- (d) According to the allegations contained in the Complaint filed by the Plaintiff herein, the amount of damages sought in this action is an unspecified amount in excess of \$50,000.00, which is the jurisdictional limitation of the Circuit Court of Cook County, Illinois, Law Division. Plaintiff's attorney has filed an affidavit along with the Complaint attesting to the fact that the damages sought in this action exceed \$50,000.00. The medical records obtained herein indicate that Plaintiff claims to have sustained a left shoulder injury with neurological symptoms including numbness in his left upper extremity. Plaintiff Counsel has indicated that he cannot agree or stipulate that the value of the case will not exceed \$75,000.00 exclusive of interest and costs;

- (e) Charles Quinones, Jr., although not yet served, has consented to the removal of this action to Federal Court. A copy of said Consent is attached hereto as Exhibit "d";
 - (f) Based upon the foregoing, and while Defendant expects to contest liability and damages, it is Defendant's good faith belief that the amount in controversy in this action exceeds \$75,000.00, exclusive of interest and costs, and there is complete diversity between Plaintiff and all Defendants;
 - (g) This Notice of Removal is being filed with the Clerk of the United States District Court for the Northern District, Eastern Division, within thirty (30) days of service of the Summons and Complaint on the first Defendant served in this action;
 - (h) This action, based upon diversity of citizenship and the amount in controversy is, therefore, properly removable, pursuant to 28 U.S.C. § 1441(a).
7. Defendant will promptly file a copy of this Notice of Removal with the Clerk of the Circuit Court of Cook County, Illinois.

WHEREFORE, O'REILLY AUTOMOTIVE, INC., respectfully request that this case proceed before this Court as an action properly removed.

Respectfully submitted,

JOHNSON & BELL, LTD.,

By: /s/Robert M. Burke
Robert M. Burke, One of the
Attorneys for O'Reilly Automotive,
Inc.

ROBERT M. BURKE
JOHNSON & BELL, LTD.,
33 West Monroe Street, #2700
Chicago, Illinois 60603
Telephone: (312) 0770

TED:gtm

Atty No: 29365

9N-58

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

KEVIN MCHUGH,)
Plaintiff,)
v.) NO:
O'REILLY AUTOMOTIVE, INC., an Illinois) JURY DEMAND
Corporation, by and through its authorized agent)
and employee, CHARLES QUINONES, JR.,)
and CHARLES QUINONES, JR., Individually,)
Defendants.)

COMPLAINT AT LAW

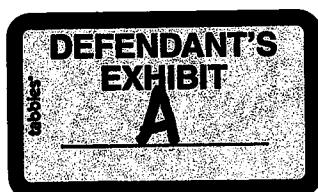
Plaintiff, KEVIN MCHUGH, by and through his attorneys, COGAN & McNABOLA, P.C., complaining of the defendants, O'REILLY AUTOMOTIVE, INC., a Missouri Corporation (Hereinafter "O'REILLY"), by and through its authorized agent and employee, CHARLES QUINONES, JR., and each of them, and states as follows:

1. That on and before January 5, 2009, defendant, O'REILLY, was a corporation organized and existing pursuant to the laws of the State of Missouri and was authorized to do business in the State of Illinois.
2. On and before January 5, 2009, plaintiff, KEVIN MCHUGH, resided at 1923 West Belle Plaine, City of Chicago, County of Cook, State of Illinois.
3. On information and belief, on January 5, 2009, defendant, CHARLES QUINONES, JR., resided at 5241 West Addison, City of Chicago, County of Cook, State of Illinois.

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CIRCUIT COURT
COOK COUNTY
LAW DIVISION



4. That on and before January 5, 2009, defendant, O'REILLY, employed defendant, CHARLES QUINONES, JR., and he was at all relevant times the agent and employee of O'REILLY.

5. That on January 5, 2009, Artesian Road was a road running in a north/south direction at or near its intersection with Montrose Avenue, which was a road running in an east/west direction, in the City of Chicago, County of Cook, State of Illinois.

6. At all times relevant, the defendants, O'REILLY, by and through its authorized agent and employee, CHARLES QUINONES, JR., owed a duty of reasonable care to members of the public including the plaintiff, KEVIN MCHUGH, in the operation of a motor vehicle.

7. That on January 5, 2009, the plaintiff, KEVIN MCHUGH, owned, operated, managed, maintained and/or controlled a 2003 Ford Ranger traveling westbound on Montrose Avenue at the location aforesaid.

8. That on January 5, 2009, defendant, O'REILLY, by and through its authorized agent and employee, CHARLES QUINONES, JR., owned, operated, managed, maintained and/or controlled a 2003 Ford Ranger traveling southbound on Artesian Avenue and was attempting to turn left onto eastbound Montrose Avenue at the location aforesaid..

9. That on January 5, 2009, the motor vehicle owned, operated, controlled and/or managed by defendant, O'REILLY, by and through its authorized agent and employee, CHARLES QUINONES, JR., came into violent contact with the motor vehicle operated by plaintiff, KEVIN MCHUGH.

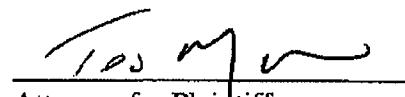
10. On January 5, 2009, the defendants, O'REILLY, by and through its authorized agent and employee, CHARLES QUINONES, JR., and each of them, were negligent in one or more of the following ways:

- a. Carelessly and negligently operated, owned, managed, maintained, and/or controlled, and drove a motor vehicle into a collision with the motor vehicle then and there being operated by the plaintiff;
- b. Carelessly and negligently operated his motor vehicle without keeping proper lookout;
- c. Carelessly and negligently proceeded at a speed which was greater than reasonable and proper with regard to traffic conditions, or which endangered the safety of person or property in violation of 625 ILCS 5/11-601.
- d. Carelessly and negligently failed to decrease speed so as to avoid colliding with another vehicle, in violation of 625 ILCS 5/11-601.
- e. Carelessly and negligently failed to equip said vehicle with adequate brakes, in violation of 625 ILCS 5/12-301.
- f. Carelessly and negligently failed to give audible warning with his horn when such warning was reasonably necessary to insure safety, in violation of 625 ILCS 5/12-601.
- g. Carelessly and negligently failed to yield the right-of-way to a vehicle approaching from the opposite direction while making a left-hand turn in violation of 625 ILCS 5/11-902.
- h. Carelessly and negligently failed to exercise due care in violation of 625 ILCS 5/11-1003.1.

11. As a proximate result of one or more of the following negligent acts or omissions of the defendants, O'REILLY, by and through its authorized agent and employee, CHARLES QUINONES, JR., the plaintiff, KEVIN MCHUGH, suffered damages of a personal and pecuniary nature.

WHEREFORE, plaintiff, KEVIN MCHUGH, demands judgment against the defendants, O'REILLY AUTOMOTIVE, INC., a Missouri Corporation, by and through its authorized agent and employee, CHARLES QUINONES, JR., and each of them, in an amount in excess of the

jurisdictional amount of FIFTY THOUSAND (\$50,000.00) AND 00/100 DOLLARS.



Attorney for Plaintiff

Edward McNabola, Esq.
COGAN & McNABOLA, P.C.
55 W. Wacker Drive - 9th Floor
Chicago, IL 60601
Attorney No: 29365

TED:gtm

Atty No: 29365

9N-58

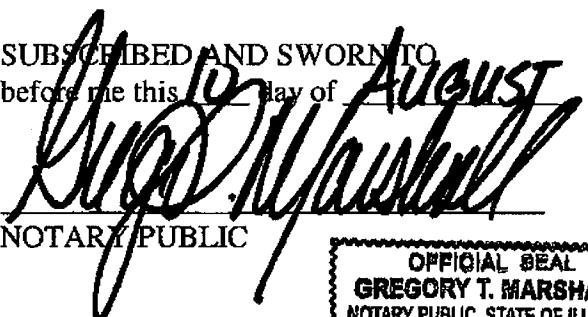
**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION**

KEVIN MCHUGH,)
Plaintiff,)
v.) NO:
O'REILLY AUTOMOTIVE, INC., an Illinois) **JURY DEMAND**
Corporation, by and through its authorized agent)
and employee, CHARLES QUINONES, JR.,)
and CHARLES QUINONES, JR., Individually,)
Defendants.)

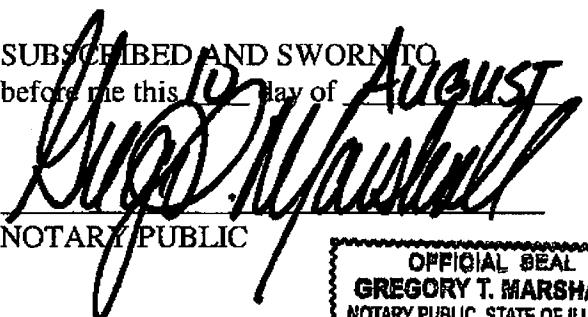
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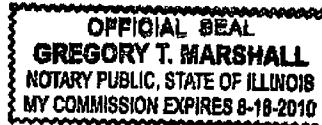
I, Edward McNabola, the affiant on oath, states:

The total of money damages sought in this matter does exceed \$50,000.


Edward McNabola

SUBSCRIBED AND SWORN TO
before me this 10 day of August, 2009.


Gregory T. Marshall
NOTARY PUBLIC



95308

2120 - Served	2121 - Served	
2220 - Not Served	2221 - Not Served	
2320 - Served by Mail	2321 - Served by Mail	
2420 - Served by Publication	2421 - Served by Publication	(Rev. 3/21/95)
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

Kevin McHugh,)	
)	
)	
v.)	No.
Charles Quinones, Jr., et al.,)	<u>PLE</u>
)	O'Re
)	c/o C
)	208 S
Defendants.)	Chica

SUMMONS

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file appearance, in the office of the Clerk of this Court (located in the Richard J. Daley Center, Room 801, Chicago, Illinois 60602) within 30 days after service of this summons, not counting the day of service. **IF YOU FAIL TO DO SO, A JUDGEMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT.**

To the officer:

This summons must be returned by the officer or other person to whom it is given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed. This summons may not be served later than 30 days after its date.

There will be a fee of \$198.00 to file your Appearance, or you may present an Application to Sue or Defend as a Poor Person (form #CCG-19). If approved by the Presiding Judge, the fee will be waived.

WITNESS,....., 20.....

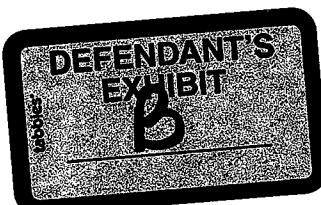
COGAN & McNABOLA, P.C.
55 West Wacker Drive, 9th Floor
Chicago, IL 60601
312-629-2900
ATTY No. 29365

**Service by Facsimile Transmission: 312-629-2916

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Date of Service:....., 20.....

(To be inserted by officer on copy left with
Defendant or other person)



TED:gtm

Atty No: 29365

9N-58

RECEIVED
COURT - LAW DIVISION
09/09/2009

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION**

KEVIN MCHUGH,)
Plaintiff,)
v.) NO: 09 L 9548
O'REILLY AUTOMOTIVE, INC., an Illinois) CALENDAR H
Corporation, et al.,)
Defendants.)

ROUTINE ORDER

This cause coming to be heard upon the plaintiff's Routine Motion to Appoint Special Process Server, due notice having been given and the Court being fully advised in the premises.

IT IS HEREBY ORDERED THAT:

United Processing, Inc., (License Number 11700101) is hereby appointed as Special Process Server.

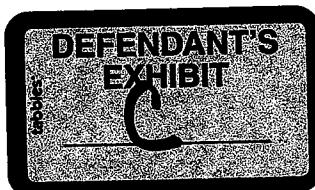
Status 11/10/09 @ 9:30 Stands

4209
4335

JUDGE Randy A. Kogan
ENTER: *[Signature]* AUG 18 2009
JUDGE *[Signature]* Circuit Court - 1509



COGAN & MCNABOLA, P.C.
55 W. Wacker Drive - 9th Floor
Chicago, IL 60601
312/629-2900



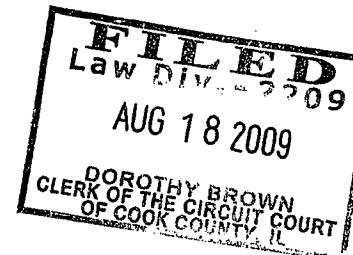
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Atty No: 29365

9N-58

**IN THE CIRCUIT COURT OF COOK COUNTY
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KEVIN MCHUGH,)
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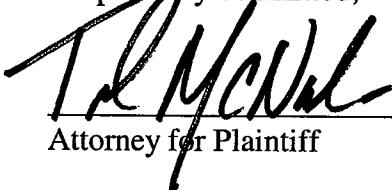
PLAINTIFF'S ROUTINE MOTION TO APPOINT SPECIAL PROCESS SERVER

Plaintiff, KEVIN MCHUGH, by and through his attorneys, COGAN & MCNABOLA, P.C., moves this Honorable Court for leave to appoint United Processing, Inc. (License Number 11700101) as Special Process Server for the reasons set forth as follows:

1. The employees of United Processing, Inc. are over the age of 18 and not a party to this action.

WHEREFORE, Plaintiff, KEVIN MCHUGH, requests that United Processing, Inc., (License Number 11700101) be appointed as Special Process Server.

Respectfully Submitted,



Attorney for Plaintiff

Edward McNabola, Esq.
COGAN & MCNABOLA, P.C.
55 W. Wacker Drive - 9th Floor
Chicago, IL 60601

TED:gtm

Atty No: 29365

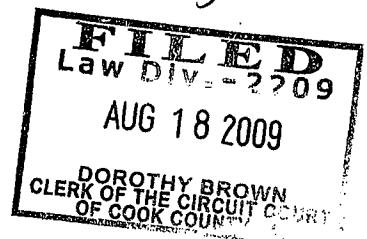
9N-58



IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

KEVIN MCHUGH,)
Plaintiff,)
v.) NO: 09 L 9548
O'REILLY AUTOMOTIVE, INC., an Illinois) CALENDAR H
Corporation, et al.,)
Defendants.)

NOTICE OF ROUTINE MOTION



TO: NO NOTICE REQUIRED - DEFENDANTS YET TO BE SERVED

On August 18, 2009, at 8:45 a.m., or as soon thereafter as counsel may be heard, I shall appear before The Presiding Judge in Room 2209 in the Daley Center, Chicago, Illinois, and shall then and there present the attached: **Plaintiff's Routine Motion to Appoint Special Process Server.**

Name: Cogan & McNabola, P.C.
Address: 55 W. Wacker Drive
Telephone: (312) 629-2900

Attorney for: Plaintiff
City: Chicago, IL 60601
Atty. No: 29365

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
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KEVIN MCHUGH,)
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vs-) Case No.:
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Illinois Corporation, by and through its)
Authorized agent and employee,) Magistrate
CHARLES QUINONES, JR., and)
CHARLES QUINONES, JR. individually)
Defendants.)

CONSENT TO REMOVAL

NOW COMES Defendant, **CHARLES QUINONES, JR.**, and without waving any jurisdictional defenses, hereby consents to the removal of the above captioned lawsuit from the Circuit Court of Cook County to the Federal District Court for the Northern District of Illinois, Eastern Division.

Charles Quinones, Jr.,

By: /s/Robert M. Burke

One of the attorneys for Charles Quinones, Jr.

ROBERT M. BURKE
JOHNSON & BELL, LTD.
Attorney for Defendants
33 West Monroe Street, Suite 2700
Chicago, Illinois 60603
Telephone: (312) 372-0770
Attorney No.: 06347

